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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS–HQ–MB–2013–0135; FF09M21200–145–FXMB1232099BPP0]

RIN 1018–AX82

**Migratory Bird Permits; Extension of Expiration Dates for Double-Crested
Cormorant Depredation Orders**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; availability of environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), revise the two depredation orders for double-crested cormorants (*Phalacrocorax auritus*, DCCOs). We extend the expiration dates for the orders for 5 years to allow State and Tribal resource management agencies to continue to manage DCCO problems and gather data on the effects of DCCO control actions. We have prepared a final environmental assessment (FEA) to analyze the environmental impacts associated with this extension. We change the annual reporting date for the depredation order to protect public resources, remove requirements for DCCO control activities around bald eagles and bald eagle nests for both orders, and require use of the National Bald Eagle Management Guidelines for both orders. We also

add a requirement for the use of nontoxic rifle bullets for anyone using centerfire rifles to control DCCOs under the orders, beginning on January 1, 2017.

DATES: This rule will be effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: *Document availability:* The FEA and public comments that we received on the proposed rule are available at <http://www.regulations.gov> under Docket No. FWS–HQ–MB–2013–0135, and on our Service website at <http://www.fws.gov/migratorybirds/>.

FOR FURTHER INFORMATION CONTACT: George Allen at 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), the U.S. Fish and Wildlife Service has primary Federal responsibility for managing migratory birds. We carry out this responsibility through regulations in title 50 of the Code of Federal Regulations (CFR). Part of this process includes issuing permits for certain actions dealing with migratory birds. In part 21 of title 50 of the CFR, we have established depredation orders for the control of certain depredating birds. A depredation order is a regulation that allows the take of specific species of migratory birds, at specific locations, and for specific purposes, without a depredation permit.

The Aquaculture Depredation Order at 50 CFR 21.47 allows take of double-crested cormorants (DCCOs) to protect stock at aquaculture facilities, and the Public Resource Depredation Order at 50 CFR 21.48 allows take of DCCOs to protect public resources, as set forth in the regulations. On March 5, 2014, we published a proposed rule to revise these depredation orders by, among other things, extending the expiration dates of the orders by 5 years (79 FR 12458). See the proposed rule for an explanation of the proposed changes.

Expiration Dates

We extend the regulations until June 30, 2019. Doing so will not pose a significant, detrimental effect on the long-term viability of DCCO populations. It will allow State and Tribal resource management agencies to continue to manage DCCO problems related to impacts on public resources and allow aquaculture producers to address DCCO depredation impacts on aquaculture stock under the terms and conditions of the depredation orders and gather data on the effects of DCCO control actions.

Entities acting under the depredation orders must follow applicable regulations. Depredation control efforts under the orders may take place only where cormorants are found committing or about to commit depredations under specified conditions, 50 CFR 21.47(c)(1) and 21.48(c)(1). The regulations include a requirement to initially use nonlethal control methods where practicable and effective and not harmful to other nesting birds, 50 CFR 21.47(d)(1) and 21.48(d)(1); provide notice to FWS indicating their intent to act under the depredation order, 50 CFR 21.48(d)(9); and notify the FWS in writing 30 days in advance if any single control action would individually, or a succession of such actions would cumulatively, kill more than 10 percent of the DCCOs

in a breeding colony, 50 CFR 21.48(d)(9)(i). We can prohibit cormorant take under the depredation orders if we deem it a threat to the long-term sustainability of DCCOs or any other migratory bird species, 50 CFR 21.48(d)(9)(ii). Similarly, we can suspend or revoke the authority of any person or agency acting pursuant to the depredation orders who does not adhere to the orders' purposes, terms, and conditions or if the long-term sustainability of DCCO populations is threatened, 50 CFR 21.47(d)(10) and 21.48(d)(13).

Updated population information indicates that the orders have not had a significant negative effect on regional DCCO populations (see data in the FEA). To summarize the FEA here, a 2006 study by Wetlands International estimated the continental DCCO population at between 1 to 2 million birds of four recognized subspecies. In the southeastern United States, though numbers of cormorants declined 46% in both Mississippi and Alabama from the peak count in 2004, cormorants in the region have undergone dramatic increases in the last 20 years; and, in a 2006 study, Mississippi populations at some colonies are likely greater than the pre-1990 levels. The Southern US estimates between 37,000-73,000 birds. In the U.S. Great Lakes from 1997 to 2011, the cormorant population was between 45,626 and 53,802 breeding pairs (nests). Under various DCCO management scenarios, we estimate that the Great Lakes DCCO population would be lower than current numbers but would remain significantly higher than populations in the early 1990s.

The depredation orders will now expire on June 30, 2019. If we determine that future changes to the depredation orders are necessary to eliminate an expiration date or make other changes, we will publish the requisite documents in the **Federal Register** to make those changes.

Other Changes to the Depredation Orders

We make other changes to the depredation orders at 50 CFR 21.47 and 21.48 to bring them in line with our current regulations and practices. We add a January 31st reporting deadline to the depredation order at aquaculture facilities (50 CFR 21.47), and we change the annual reporting date for the depredation order to protect public resources (50 CFR 21.48) to January 31 to give respondents an additional month to submit the requisite information. The two depredation orders now will have the same reporting date.

In addition, we update both depredation orders to remove the requirements for cormorant control activities around bald eagles (*Haliaeetus leucocephalus*) and bald eagle nests. These requirements for bald eagles and bald eagle nests were included in the depredation orders because the species was protected at that time by the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). The bald eagle has since been removed from the Federal List of Endangered and Threatened Wildlife (72 FR 37345; July 9, 2007), so the requirements no longer apply. In lieu of those protections, we revise the depredation orders to require use of the National Bald Eagle Management Guidelines (72 FR 31156; June 5, 2007) for both depredation orders. The guidelines provide information to land managers, landowners, and others on ways to avoid disturbing bald eagles and their nests.

Comments on the Proposed Rule and Draft Environmental Assessment

We received 30 comments from individuals, organizations, State agencies, and Flyways on the March 5, 2014, proposed rule (79 FR 12458–12461) and draft

environmental assessment (DEA). State natural resource agencies, the Flyway Councils, and several individuals encouraged continuation and expansion of the depredation orders. Most individuals, nongovernmental organizations, and academic institutions that commented opposed continuation of the orders. Below are the comments that we consider significant or representative and our responses to them.

Comment. “By their own choice, fishermen on the Great Lakes and politicians blindly supporting them, have conveniently disregarded scientific data that demonstrate the minimal effect cormorants have on overall fish stocks. Cormorants are opportunistic feeders, feeding on the most available species at any particular time. Although capable of reaching greater depths, cormorants typically dive to about twenty feet during their pursuit dives, preying on forage species gathering for seasonal spawning, favorable temperatures, and searching for their own prey species. Some species are the same species sought by fishermen, such as smallmouth bass, yellow perch, and walleye, but when conditions change and these fish move to deeper waters cormorants move on to other non-game species such as alewives, sunfish, and round gobies. Gamefish constitute a small portion of the cormorant’s total diet.”

Response. The numerous studies cited in the DEA document the difficulty in assessing the causes of sport fish and commercial fish population declines. However, as we noted, it is not just through direct take of game fish that DCCOs can contribute to sport fish and commercial fish declines; in some circumstances, DCCO predation on forage fish that comprise the diet of game fish can also impact the latter species. The Public Resource Depredation Order requires fisheries management agencies to describe the evidence that supports their conclusion that DCCOs are causing or will cause impacts

to fish populations, and that DCCO management is needed. This justification is based on fish population assessments, angler harvest data, research studies, and/or expert opinion.

Comment. “Both recreational and commercial fishermen have continually failed to recognize the effects of overfishing. It was no coincidence that the extinctions of the lake trout in Lake Ontario in the 1950s and followed by the Atlantic salmon in the early 1990s were followed by tremendous blooms in the populations of forage fish – with fewer predators in the lake the predator-prey relationship changed drastically. Hundreds perhaps thousands, of sport charter trips each season that encouraged clients to fill their coolers and home freezers with sport fish further taxed remaining predator stocks. (Some species were still contaminated with industrial and agricultural pollutants and not recommended for frequent human consumption – zero consumption by expectant mothers – by the New York State Department of Environmental Conservation). The resulting rapidly expanding forage populations suited nesting cormorants just fine. In the North, there were now virtually unlimited food sources available to feed their chicks, further enhancing cormorant expansion. (In the South, the new open catfish ponds provided winter forage, keeping cormorants healthy for their northern migration in the spring.)”

Response. We acknowledge that numerous factors (perhaps including overfishing) can affect fish population and community dynamics. This can result in increases in certain fish species that are readily preyed on by DCCOs. This, in turn, can increase their survival and productivity rates and, ultimately, their populations.

Comment. “Another factor influencing the expansion of cormorant populations and territories was the introduction of new and invasive species such as alewives, through the construction of canals bypassing the barrier of Niagara Falls; round gobies, probably

introduced through the ballast of foreign freighters; and the arrival of the parasitic sea lamprey through the St. Lawrence Seaway, which further decimated predatory salmon and trout in the Great Lakes. Cormorants had nothing to do with these destructive, human-generated influences, yet pay the price due to outmoded thinking.”

Response. We acknowledged in the FEIS and the DEA that introduced species, particularly the alewife (*Alosa pseudoharengus*) and the round goby (*Apollonia melanostoma*), played a role in DCCO population and distribution changes. As noted in the DEA, the DCCO population changes also adversely affected both other bird species and habitats for other species; through physical and chemical means, DCCOs damage, and often kill, shrubs and trees where they nest and roost. .

Comment. “In the South, catfish farming came about in the 1960s as a result of depressed prices farmers were getting for row crops such as corn and soybeans. As a second effort, catfish ponds were constructed on shoestring budgets and weak business plans. Catfish farmers have now had at least four full decades to learn how to improve and protect their facilities and investments. They found time and funding to create numerous associations, build their own feed and processing plants, and develop advertising campaigns and distribution systems. But still their business plans depend on government “technicians” and taxpayer dollars to thin cormorant populations rather than incorporating realistic budgets for securing their unprotected ponds. When will it be time for the catfish growers to step up and assume responsibility for their own industry instead of four decades of “crying wolf” as a victim?”

Response. The regulations at 50 CFR 21.47(d)(1) of the Aquaculture Depredation Order specify that “Persons operating under paragraph (c)(1) of this section may only do

so in conjunction with an established nonlethal harassment program as certified by officials of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service.”

Most Control of depredating DCCOs at aquaculture facilities depends neither on “government technicians” nor government funding for control. Lethal control at aquaculture facilities usually is done by the permittees—in conjunction with nonlethal control. Most migratory bird depredation control, either under permits or depredation orders, is done by the permittees.

Comment. “Here on lower Green Bay I have monitored cormorant nesting since I discovered the first handful of nests in 1976. Last year after shooting and oiling eggs for the past order period, we had only 640 nesting pairs, approximately a 70% decline from the peak nesting numbers. There was [sic] never any scientific studies demonstrating that cormorants had any effect on Yellow Perch populations on the bay. The one study done only used data from the once in decade exceptional perch reproduction year, which cormorants committed to their diet as the easiest thing to catch. Data from previous years and post years revealed a much different diet composition. That study also never took into consideration that Wisconsin DNR planted 89.2 million Walleye fry into the system which also ate Yellow Perch 24/7. No consideration was given to the fact that cormorants in late July through September consume vast numbers of Gizzard Shad which now have reached nuisance numbers on the lower bay and which not only compete with perch for food resources but also dine on perch eggs and larval young. Single species management to solve a complex problem never works and often compounds it. The order has also affected other colonial species nesting on Cat Island. Great Egrets and Black-

crowned Night Herons (state watch species) have stopped nesting on Cat Island. In the past eggs of these species were “accidentally” oiled along with cormorant eggs.

Reproduction of White Pelicans on Cat Island has decreased with the amount of cormorant egg oiling activity. The Fish and Wildlife Service has not properly monitored control activities and their effects on other associated species.”

Response. While the impacts (if any) of DCCOs on yellow perch are difficult to measure, reducing DCCO consumption of yellow perch is not the main focus of DCCO control on lower Green Bay. The latest correspondence the FWS received from the Wisconsin Department of Natural Resources (WDNR) indicated a major focus of DCCO control on lower Green Bay is to “. . . maintain a colony size [on the Cat-Lone Tree Island complex] that will not likely expand and threaten the remaining woody vegetation on nearby Lone Tree Island which supports nesting Great Egrets and Black-crowned Night-Herons, or onto newly created dredge spoil islands in future years.” With respect to the impact of DCCO control activities on other bird species, the WDNR’s latest annual report indicated that no incidental take of co-nesting birds occurred. Various measures are taken to minimize the likelihood of incidental take of other bird species during DCCO management activities, including minimizing the number and duration of visits to DCCO colonies, avoiding visits on days of extreme temperature or precipitation, shooting DCCOs in some cases at sites away from a nesting island, and training shooters in bird identification and marksmanship.

Comment. “In the text of its proposal for extending the current depredation orders the USFWS claimed it collected data during the last five-year extension regarding cormorant populations in support of the new five-year extension. Merely reporting that

depredation orders “had not had any significant effect on double-crested cormorant populations” is not sufficient evidence to extend the various versions of the depredation orders. The USFWS offers no positive evidence that killing cormorants has helped to rebuild wild fish stocks weakened primarily by overfishing, invasive species, pollution, and development. It appears that the agency is more willing to maintain the status quo of passing its duties to state bureaus than exercising its responsibility for “managing” cormorant issues.”

Response. We did not just report that the depredation orders “had not had any significant effect on double-crested cormorant populations”; data in Table 2 of the DEA showed that the total Great Lakes population was about 26% larger in 2009 than it had been in 1997. Though the data in the DEA are the best available, other data indicate that DCCO populations continue to grow. For example, although the North American Breeding Bird Survey (BBS) is not intended for monitoring DCCOs, in every Bird Conservation Region, State, or Province around the Great Lakes for which there are BBS data, the population trend is generally positive since 1966, close to 5% nationally but ranging from 2 to over 20% depending on the state/region (<http://www.mbr-pwrc.usgs.gov/cgi-bin/atlasa12c.pl?01200&1&12>). Our obligation under the Migratory Bird Treaty Act is to ensure the well-being of populations of protected species, which we will continue to do for DCCOs. We continue to believe that efforts to address the adverse impacts of DCCOs on habitats and fisheries under the depredation orders have been limited in scope, and have not impacted the sustainability of regional DCCO populations.

The FWS does not “pass its duties to state bureaus.” We have a long history of working with the States and tribes on management of migratory birds and other shared resources. We will continue to work with them on DCCO management. With respect to DCCO impacts on fish, State natural resource agencies usually have legal responsibility for fisheries management and the FWS recognizes the States’ role in documenting such impacts. Again, we can suspend or revoke the authority of any person or agency acting pursuant to the depredation orders who does not adhere to the orders’ purposes, terms, and conditions, 50 CFR 21.48(d)(13).

Comment. “FWS offers no explanation for why it has been unable to conduct a thorough review of the issue during the past five years. Indeed, FWS implies that it has not taken the time to examine any aspect of the issues since it offers no report on what, if anything, it has learned or done in the past five years.

Instead, FWS states in the DEA that it will address concerns and alternatives “in a subsequent analysis” but without specifying when. Since FWS regards extending the Orders by another five years to be only “an interim measure” one can reasonably expect that its state of review will not have progressed when this extension expires in 2019.

In short, FWS appears to be using its lack of diligence and rigor as a justification for “Xeroxing forward” a largely unexamined policy.”

Comment. “I also support this Alternative [A], in part, because all decisions on cormorant management seem to have been largely driven by the powerful aquaculture industry and sport angler/tourism-related citizen groups, with little to no voice given to the scientific community. Furthermore, there has been very little consistent monitoring to determine effectiveness of control, primarily because it is difficult to obtain the data and

because the Fish and Wildlife Service is unwilling to extend the resources needed to evaluate the effects of the depredation orders.”

Response to these comments. We believe that the scientific community (including biologists and researchers who work for the FWS, State and Tribal agencies, and USDA Wildlife Services) has played an important and growing role in DCCO management by designing and conducting studies and monitoring programs that better document the impacts of DCCOs on public resources and aquaculture stock, assess the effectiveness of DCCO management actions, and track DCCO and co-nester population trends in response to management. This information is used in an adaptive context to adjust DCCO control activities. In the Great Lakes, the FWS works with State and Tribal agencies, USDA Wildlife Services, and researchers to monitor DCCO numbers, distribution, and trends as an index to assessing the health of the Interior population of DCCOs. Monitoring of impacted resources is also being done to document problems and evaluate whether DCCO control activities are effective in alleviating them; such monitoring is often challenging and expensive and not as comprehensive as some commenters would like. However, as shown in the DEA, the depredation orders are not affecting the sustainability of regional DCCO populations. In the U.S. Great Lakes region, where DCCO control has been most intensive, the population in 2009 was 27% greater than it had been in 1997.

Comment. In this instance, FWS has impermissibly sought to use the lack of information as the basis for its review of potential environmental impacts.

Response. This comment is not correct. Data in the FEA, such as the Great Lakes region, and other data show that DCCO populations have continued to expand with

the depredation orders in place. Again, in the southeastern United States, cormorants in the Mississippi and Alabama region have undergone dramatic increases in the last 20 years, with some Mississippi populations at some colonies likely greater than the pre-1990 levels. The data support continuing the regulations allowing for depredation orders and allowing DCCO lethal control after nonlethal control has been attempted, for 5 more years.

Comment. According to the DEA, together the two Orders authorize lethal take of an estimated 160,000 DCCOs per year although the agency estimates that only 27% of the authorization is exercised, meaning that more than 43,000 birds were “harvested” annually during the period from 2004 to 2012.

The DEA contains population modeling which is the first time FWS has directly addressed effects of the Orders on future DCCO population. In one modeling scenario, the Service estimates that as much as a 48% decline in the entire DCCO population could result. While the percentages of the DCCO population lost vary in different modeling scenarios, there is no question that extension of the Orders will have a significant impact on these populations.

Response. This is not the first time the FWS has employed population modeling to evaluate various DCCO management scenarios; we did so in 2009 (FR 74 15394) when we originally extended the expiration dates of the depredation orders. Though some models indicate that the DCCO population could decline, data in the DEA, such as the Great Lakes, Alabama, and Mississippi described above, show that the population has continued to grow with the depredation orders in place. We expect to further refine our modeling efforts when we do a more comprehensive NEPA analysis.

Comment. “CEQ regulation 40 C.F.R. § 1508.9(a)(1) stipulates that an EA must “Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.”

This EA does not do so, despite the agency’s statement in the 2011 **Federal Register** notice that the decision of whether to prepare a Supplement Environmental Impact Statement or an Environmental Assessment would be based on NEPA and its implementing regulations 76 Fed. Reg. 69226. FWS has provided no support for its conclusion that an EIS or SEIS is not required under NEPA—but rather has stated that it did not prepare an SEIS because of “constraints on our ability to conduct the work necessary to complete a supplemental environmental impact statement.” 79 Fed Reg 12458 (March 5, 2014). Again, failure to do the necessary work does not excuse compliance with NEPA.”

Response. This argument is incorrect. We completed an environmental assessment that supports continuing the depredation orders for five more years without major changes. We stated in the DEA that “[t]his EA is sufficient to assess the environmental impacts of this action and assist our decision-making process.” We established in a Finding of No Significant Impact that an environmental impact statement is not needed for us to extend the orders without substantial changes. As we noted earlier, we would like to do a more comprehensive NEPA analysis in which we may consider more substantive modifications and expansion of the depredation orders, as requested by States.

Comment. “In accordance with the Council on Environmental Quality regulations, an environmental assessment must include a brief discussion of alternatives.

40 C.F.R. § 1508.9(b). “[C]onsideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process . . .”. *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228–29 (9th Cir. 1988).

Limiting the alternatives to letting the Orders expire, renewing them for 5 years and renewing them indefinitely – without even considering modifications to the Orders -- cannot meet the requirement to consider reasonable alternatives. *Save Our Cumberland Mts. v. Kempthorne*, 453 F.3d 334, 345 (6th Cir. 2006). See also *Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002) (rejecting alternatives analysis limited to choice between build and no build); *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999) (consideration of no action and two virtually identical alternatives insufficient).”

Response. We disagree, and believe that this comment misrepresents the alternatives. They ranged from the restrictive choice desired by some commenters (eliminating the depredation orders and allowing take only under permits) to continuing operating indefinitely under regulations that we believe have had no significant effect of the sustainability of regional DCCO populations.

Comment. The inability of the USFWS to follow the EIS procedure does little to promote science-based management, conserve migratory birds protected under the Migratory Bird Treaty Act, or promote the mission of the USFWS.

Response. We have followed appropriate NEPA procedures. We established in a Finding of No Significant Impact that an EIS is not needed for us to assess continuing the depredation orders for five more years without significant changes.

Comment. “The loss of approximately one half million large, long-lived migratory birds is unquestionably a significant environmental impact requiring more than the cursory assessment FWS has given it. This action requires a full EIS or SEIS rather than merely this DEA.”

Response. We disagree. Data show that the DCCO population in the United States remains healthy, despite control under the depredation orders. Again nationally there is estimated between 1 to 2 million birds. In the U.S. Great Lakes from 1997 to 2011, the cormorant population has increased to between 45,626 and 53,802 breeding pairs (nests). We established in a Finding of No Significant Impact that an EIS or SEIS is not needed to allow us to continue the depredation orders for 5 more years without substantial changes.

Comment. “Another problem connected with repeated shooting campaigns is that there is no valid way to evaluate or monitor their efficiency. So many factors contribute to the rise and fall of wild fish populations that isolating the effects of a single action is problematic. Without a way of measuring the effectiveness of the culling policies there is no way for managers to know when they are done. When is it over? How many dead wild cormorants does it take to finish the job?”

Response. We agree that it is challenging to evaluate the effects of DCCO management on fish populations. However, a number of State agencies are assessing various fish response parameters (population size, age structure, angler harvest) and their relationship to DCCO population changes following control. Furthermore, DCCOs can detrimentally impact plants and habitats of other bird species. Through physical and

chemical means, DCCOs damage, and often kill, shrubs and trees where they nest and roost, if not modifying the plant community.

Comment. Significantly, the specific impacts the Orders will have depend upon factors such as the extent and manner of state implementation—factors that FWS chooses not to oversee or even meaningfully address. Thus, FWS proposes to continue policies that will have largely unknown impacts with no plan to fill in those data gaps.

Comment. “Most FWS management plans for other migratory species seek to preserve and enhance the status of these species within healthy, functioning ecosystems. In the case of the DCCO, maintaining a healthy population status is barely an afterthought for FWS.”

Response to these comments. In the Great Lakes, the FWS has worked with USDA Wildlife Services and State and Tribal agencies to develop environmental assessments that step down the 2003 FEIS, and these documents set limits on DCCO take at the state level that will maintain the sustainability of DCCO populations. Data in the DEA and other data continue to show that the DCCO population is substantial. Again, the cormorant population was between 45,626 and 53,802 breeding pairs (nests) in the Great Lakes from 1997 to 2011. We will continue to oversee take under the depredation orders and to monitor DCCO numbers, distribution, and trends in the Great Lakes to ensure that the sustainability of regional DCCO populations is maintained. Again nationally, there are between 1 to 2 million birds.

Comment. “. . . FWS should allow these orders to expire until such time that FWS has adequate resources to deal thoroughly with the issues involved and answer the comments, suggestions, and questions raised by the public since the Final Environmental

Impact Statement (FEIS) was issued in 2003.” “The loss of approximately a half million large, long-lived migratory birds seems to be a fairly significant event deserving more attention than FWS has been willing to give it. The correct action is to let the Orders expire and discover whether or not they are important enough to free up the resources needed to do the job properly.”

Response. States and tribes have made it clear that they support continuing the Public Resource Depredation Order because it gives them an option (besides required non-lethal options) for dealing with DCCO impacts on fisheries and habitat. Data in the DEA show that the DCCO population is healthy. As we noted, in the U.S. Great Lakes region, where DCCO control has been most intensive, the population in 2009 was 27% greater than it had been in 1997. With respect to the Aquaculture Depredation Order, as reported in the DEA, anecdotal observations from APHIS-WS indicate that changes in aquaculture operations may be leading to greater concentrations of DCCOs in some remaining facilities, leading to even more severe damage to aquaculture stock at those facilities than has been previously observed. Continuation of the depredation order and monitoring the impacts of damage-management actions on DCCOs and nontarget species will continue to allow control of depredation problems in a responsible and efficient manner. We will still be able to assess take of DCCOs and its effects on their population sustainability.

Comment. “The PRDO applies only to Public resources. Even though a convoluted argument can be constructed to link cormorants on private lands to potential predation on fish inhabiting public lands, to do so is absurd. Of course fish-eating birds eat fish, whether on private or public property. That is what predators do and to issue a

blanket declaration that they are nuisances everywhere is to accept that predation is unacceptable at all times and places. That, in effect, is what the absurd legalistic language, “committing or about to commit depredation”, does. All predators, including humans, commit depredations under this construct and it is silly to pretend otherwise; the issue here is not about the words but it is about extending the PRDO to private lands that are already adequately covered by the individual permit program. The PRDO requires documentation that control actions are directed at resolving a resource problem. The Texas Nuisance Permit has no such provision, it effectively declares all DCCO a nuisance and allows unlimited take by any Texas hunting license holder with \$13 and permission of a landowner regardless of whether or not there is loss of public resources.”

Comment. “In Texas, the PRDO that FWS would renew would continue the Nuisance Double-crested Cormorant Control Permit program in that state [see <http://www.tpwd.state.tx.us/business/permits/land/wildlife/cormorant/>]. This permit program appears to be lack [sic] any reasonable management control and is in conflict with the PRDO in a number of respects.”

Response to these comments. We appreciate the commenters bringing this issue to our attention. Texas Administrative Code Rule §65.901 ([http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=2&ch=65&rl=901](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=2&ch=65&rl=901)) appears not to comply with 50 CFR 21.48 because it allows take of DCCOs on private land even though the DCCOs are not necessarily linked to any adverse effect on public resources. We will work with the State of Texas on this issue, and if the State does not revise its code to

match the provisions of 50 CFR 21.48, we will remove Texas from the list of States that are authorized to implement the Public Resource Depredation Order.

All migratory bird permits and regulations that allow take disallow take of that species not covered under the permit or regulation – even the same species if the manner of that take is not permitted. Following the terms of the permit or regulation is an obligation of the permittee or any person, organization, or agency entity acting under a control or depredation order. Failure to abide to the terms of the depredation order may lead to suspending or revoking the authority of any person or agency acting pursuant to the depredation orders and prosecution under the MBTA.

Comment. “We believe that implementing a regional management approach for this species is the optimal long term solution to balancing the viability of double-crested cormorant populations with conservation of public fisheries and wildlife while also being responsive to societal concerns about impacts to private property and human safety. The review and update of the Final Environmental Impact Statement on double-crested cormorant management is of paramount importance.

We support the proposed regulatory changes as the best option to address issues while protecting populations in the short term. This support is predicated on the timely completion of an update of the FEIS prior to the proposed 2019 expiration dates of the federal depredation orders.” (*Michigan Department of Natural Resources*)

Response. We intend to complete a comprehensive NEPA analysis, which could result in a Supplemental EIS, as our resources allow. We wish to complete a more comprehensive NEPA analysis on DCCO management because additional State agencies have requested that they be covered under the Public Resource Depredation Order (see

the comments from the Pacific Flyway) and because we received a number of other comments in response to our 2011 Notice of Intent to update our NEPA evaluation for the depredation orders (76 FR 69225) to make other changes to the depredation orders and to consider a regional (rather than to update NEPA local) approach to DCCO management, as suggested by the above comment.

Comment. The [Pacific Flyway] Council recognizes that the alternatives and modifications [to the depredation orders] proposed in our [April 6, 2012] letter addressing western conflicts and concerns [made in response to a November 2011 FWS Notice of Intent to update the 2003 DCCO EIS] were not considered in the draft Environmental Assessment (December 2013). We also understand that the depredation order needs to be extended to allow for central and southeastern states to continue to manage cormorant conflicts. Therefore, the Council requests extending the expiration dates of the existing depredation orders a maximum of two years (*i.e.*, June 30, 2016). This will allow time for the USFWS to complete a full analysis of the proposals provided during the 2011–2012 public comment period (including the Council recommendations attached), and finalize the SEIS for the management of cormorant populations across the United States.

Response. We appreciate the Flyway’s interest in allowing States that need to use the Public Resource Depredation Order to continue to operate under it. However, two years is not sufficient time to consider additional issues and complete a comprehensive NEPA analysis, which could lead to a Supplemental EIS. In addition, we do not have the resources to work on the NEPA analysis at this time.

Comment. ‘The population modeling presented in Appendices 3 and 4 is a welcome beginning toward resolving some of the issues involved in continuing the Orders. However, as complicated and elegant as these modeling exercises appear, they are impossible for most of the public to evaluate, particularly within the limited amount of time available for making comments. At best, these models are limited in value because they address only one narrow point of view in the overall discussion. That point is the potential of the Orders to threaten the continued existence of the species. Even though FWS has apparently decided that constitutes its primary, effectively sole, responsibility, this is a very limited perspective not generally adopted in other management actions by FWS. Most of the management plans adopted by FWS for other migratory species seek to preserve and enhance the status of these species within healthy, functioning ecosystems. Cutting through the mathematical complexity of this modeling approach, the important part of the modeling is the imposition of killing of adults and suppression of reproduction. This is the point of F_0 in the equations. The appendices presume that control at various levels is a given and only look at whether or not hypothetical populations will reach some stochastic equilibrium that has a low probability of including the possibility of extinction. The real question that should be first on the table for discussion is what the desired future state of the population should be and whether or not that will achieve underlying goals of population management. In plain language, this gets back to the issue of resource allocation. All the sophisticated mathematics within these appendices, while instructive in an academic sense, do not address this issue. FWS has again failed to address this fundamental issue and is not collecting the data necessary to inform decisions about the issue. The sophisticated

mathematical models used here are misdirected relative to the Orders. Analytical resources should be focused on evaluating the effectiveness of the Orders in meeting objectives related to the original justification for issuing the Orders, namely, changes in fisheries, protection of vegetation, and protection of habitat for co-nesting species of birds.”

Response. The modeling shows take levels allowed using conservative assumptions about the DCCO population. Compared to the very conservative F_0 value of 0.5, take under the PRDO will allow continued maintenance of the DCCO population, assuming there are no large additional impacts to it, such as disease or contaminants. The models indicate that take under the Aquatic Resources Depredation Order needs to be rather conservative. We expect to continue to continue development and use of the models and the take under the orders more thoroughly in our future NEPA analysis.

Comment. We [Mississippi Flyway Council] believe that the proposed regulatory changes provide the best option to allow state and Tribal resource agencies to continue management of double-crested cormorants while maintaining long-term viability of the double-crested cormorant population. However, we feel that this is a temporary solution at best, and it is imperative that the Final Environmental Impact Statement on double-crested cormorant management be reviewed and updated prior to the projected expiration of these depredation orders in 2019. We continue to support moving to a regional management paradigm for this species.

Response to these comments. We appreciate these suggestions. We will consider them when we undertake a comprehensive NEPA analysis of the existing EIS and regulations. Though budget and personnel cuts and sequestration preclude doing so now,

we hope in the future to conduct comprehensive NEPA. We wish to complete the comprehensive NEPA analysis of DCCO management because additional States have requested that they be covered under the Public Resource Depredation Order (see the comments from the Pacific Flyway). In addition, we received a number of other comments, in response to our 2011 Notice of Intent (76 FR 69225), to make other changes to the depredation orders and to consider a regional (rather than local) approach to DCCO management.

Comment. “The Arkansas Game and Fish Commission has reviewed the U.S. Fish and Wildlife Service's proposal to extend the two depredation orders for DCCOs for another five years. The extension of these depredation orders will continue to allow us the ability to control the DCCO populations at our state-run hatcheries and on selected public fishing waters and therefore we support the proposal.”

Comment. “The Ohio Department of Natural Resources, Division of Wildlife supports the extension of the current depredation orders for 5 years. The Division of Wildlife has used the Public Resource Depredation Order since 2006, and the Order has allowed valuable nesting habitat of colonial waders to be preserved through cormorant management. We also support the other changes to the depredation orders including changing the reporting date and making changes to reflect the current status of bald eagles.

Response to these comments. None.

Comment. We would also like to propose one other minor change to be implemented with this rule. The Public Resource Depredation Order currently requires that all carcasses must be donated, incinerated, or buried. We believe that carcasses

should be allowed to lie where they fall. Cormorant culls on the Ohio Lake Erie islands are conducted to conserve valuable nesting habitat for state- listed waders such as black-crowned night- herons and great egrets. During culls, substantial effort is made to reduce disturbance to the co-nesting waders through the use of suppressed rifles, camouflage clothing, maintaining distances from areas of concentrated heron nests, etc. However, all of these efforts are negated when carcasses are collected. Greater disturbance to nesting waders occurs during the hour of carcass collection than during the 4 hours of culling. If the carcasses were left to desiccate where they fell, no additional disturbance need occur. On another Lake Erie island (Middle Island) managed by Parks Canada, cormorant carcasses are left where they fall in an effort to minimize disturbance to the co-nesting waders and reduce damage to the herbaceous understory vegetation. No negative effects have been observed and Parks Canada staff report that carcasses rapidly decompose on the island. Cormorants are currently composted on two of the Ohio Lake Erie islands and the compost sites were tested for mercury levels in 2007 and 2010. All of the tests showed mercury levels far below levels of concern.

This proposed change would not have any effect on the take of double-crested cormorants or the spirit of the depredation orders. It is a minor change such as the submission date change; however, it would further enhance the conservation of wading bird habitat and reduce disturbance to colonial waders during cormorant management.”

(Ohio Department of Natural Resources)

Response. Leaving carcasses in place was considered when we prepared the 2003 EIS. However, because of disease concerns, particularly related to botulism, we required that carcasses be removed. Carcasses may, in some instances, attract scavengers that

could disturb or prey on nesting birds. However, we believe that this issue merits further evaluation and we will consider it again when we undertake a more comprehensive NEPA analysis in the future. This five year extension will still require carcass removal.

Comment. Under the Orders, permit holders are required to use non-toxic shot only if shooting DCCO with a shotgun. Other firearms, such as rifles and handguns, carry no such restriction.

As a result, the Orders will have the effect of introducing significant amounts of additional lead-based ammunition into fragile aquatic environments.

In prohibiting use of lead-based ammunition on its National Wildlife Refuges, FWS acknowledges the severe adverse consequences that use of this toxic ammunition can have on the entire food chain. If it extends the Orders, FWS should require that all ammunition used in nuisance control permits should be non-toxic.”

Response. We recognize the environmental concerns regarding use of lead ammunition. However, the majority of DCCOs taken under the PRDO and AQDO are taken using shotguns.

When the orders were put in place, nontoxic rifle ammunition options were limited. We are aware that even though high performance non-lead ammunition has been developed for some types of firearms availability of the ammunition can be a significant problem. Therefore, we have added a requirement for the use of nontoxic bullets in centerfire rifles to the depredation orders, with an effective date of January 1, 2017. This will allow agencies to use ammunition that they have already acquired and to work with suppliers on replacing it with ammunition with nontoxic bullets. Requiring the use of

nontoxic centerfire rifle ammunition will have a negligible economic effect on those who control DCCOs under the orders, and it will have small environmental benefits.

Comment. “Many birds co-nest with the DCCO. The DEA makes scant mention of the impact that mass depredation of the DCCO has on its biological neighbors. The DEA offers no information about what steps are being taken (or required) to protect co-nesting species. Yet, the DEA offers the unsupported conclusion that “We have no reason not to believe that [state] agencies would not continue to be highly conscientious in avoiding negative impacts to bird species...at management sites.”

Without an empirical or regulatory basis for this belief, the FWS posture is that it simply hopes for the best.”

Response. The annual reports that must be submitted to the FWS by the agencies acting under the Public Resource Depredation Order indicate that incidental take of birds that nest with DCCOs is extremely rare, and certainly would not affect populations of those species. The management agencies employ a number of standard operating procedures that are designed to minimize the likelihood of other birds being adversely impacted by DCCO control activities. These include using rifles with silencers (where effective), wearing camouflage clothing, minimizing the number and duration of visits to DCCO colonies, avoiding colony site visits at times of extreme temperature or precipitation to minimize stress to non-target species’ eggs and nestlings, leaving a perimeter of untreated DCCO nests around non-target species (where practical), shooting DCCOs in some cases at sites away from a nesting island, oiling DCCO eggs and walking to and from blinds from which shooting will occur during night hours (where appropriate and safe), removing DCCO carcasses in a manner that minimizes disturbance

to co-nesters, maintaining set distances (per the depredation order regulations) from Federally threatened and endangered birds and bald eagles and golden eagles and their nests, and training shooters in bird identification and marksmanship.

Comment. “. . . [T]he DEA ignores the problem of “look alike” species, such as the neotropic cormorant. This cormorant is virtually indistinguishable from the DCCO, especially to an untrained hunter.

Response. The DEA mentions two instances of take of Neotropic Cormorants in 2007 and 2008, and some other birds (e.g., gulls) due to DCCO control activities. These incidents, although regrettable, are extremely low relative to the number of DCCOs which are removed and are not of sufficient magnitude or frequency to adversely impact non-target species populations.

The depredation order addresses “look alike” species as follows.

(7) Nothing in this depredation order authorizes the take of any migratory bird species other than double-crested cormorants. Two look-alike species co-occur with double-crested cormorants in the southeastern States: the anhinga, which occurs across the southeastern United States, and the neotropic cormorant, which is found in varying numbers in Texas, Louisiana, Kansas, and Oklahoma. Both species can be mistaken for double-crested cormorants, but take of these two species is not authorized under this depredation order.

Take of anhingas (*Anhinga anhinga*) or neotropic cormorants (*Phalacrocorax brasilianus*) is not legal under the depredation order, and we advise all States and Tribes to ensure that individuals operating under the order be trained to recognize anhingas and neotropic cormorants to avoid taking them. All migratory bird permits

and regulations that allow take disallow take of species not covered under the permit or regulation – even “look-alike” species. Identification and protection of look-alike species is an obligation of the permittee or any person, organization, or agency entity acting under a control or depredation order. Failure to abide to the terms of the depredation order may lead to suspending or revoking the authority of any person or agency acting pursuant to the depredation orders and prosecution under the MBTA.

Comment. “Large Double-crested Cormorant die-off events that are associated with avian botulism (*Clostridium botulinum*) may have impacted or stabilized breeding DCCO populations, but we do not see this topic specifically addressed in any manner in the document, including in the population models used to evaluate impacts to DCCO. We suggest that this consideration should be added to the impact analysis and decision-making process. (*National Park Service*).

Response. In our 2003 FEIS, disease was noted as a sometimes significant cause of mortality for DCCOs – particularly Type E on the Great Lakes. Other sources have noted concern about botulism in cormorant populations (*e.g.* http://www.ccwhc.ca/wildlife_health_topics/botulism/botulisme_org.php; <http://www.dec.ny.gov/animals/28433.html>; and <http://www.seagrant.sunysb.edu/botulism/pdfs/Proc03/9-Overview.pdf>). We agree that it should be addressed in more depth in our future NEPA analysis, both for its potential effects on cormorant populations and on other waterbird species the nest or roost near DCCOs. But again, in the Great Lakes the cormorant population remains healthy between 45,626 and 53,802 breeding pairs (nests) in 1997 to 2011.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 further emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility

analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act. The changes to the depredation orders at 50 CFR 21.47 and 21.48 will provide assurance that State and Tribal resource management agencies may continue to manage DCCO problems under the terms and conditions of the depredation orders and gather data on the effects of DCCO control actions and will bring the two depredation orders in line with our current regulations and practices. These changes will not have a significant economic impact on a substantial number of small entities, so a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804 (2)). It will not have a significant impact on a substantial number of small entities.

a. This rule will not have an annual effect on the economy of \$100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, Tribal, or local government agencies, or geographic regions.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not “significantly or uniquely” affect small governments. A small government agency plan is not required. The revisions will not have significant effects. The regulation will very minimally affect small government activities by changing the annual reporting date for 50 CFR 21.48.

b. This rule will not produce a Federal mandate of \$100 million or more in any year. It will not be a “significant regulatory action.”

Takings

This rule does not contain a provision for taking of private property. In accordance with Executive Order 12630, a takings implication assessment is not required.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a federalism summary impact statement under Executive Order 13132. It will not interfere with the States’ abilities to manage themselves or their funds. No economic impacts are expected to result from the changes to the depredation orders.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C 3501 *et seq.*). The information collection requirements at 50 CFR 21.47 and 21.48 are approved under OMB Control Number 1018-0121, which expires February 29, 2016. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432-437(f), and U.S. Department of the Interior regulations at 43 CFR 46. We have completed a final environmental assessment, and have determined that this action will have neither a significant effect on the quality of the human environment, nor unresolved conflicts concerning uses of available resources. The Finding of No Significant Impact is posted in the docket with this final rule.

Government-to-Government Relationship with Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and 512 DM 2, we have determined that there are no potential effects on Federally recognized Indian Tribes from the regulations change. The regulations changes will not interfere with Tribes’ abilities to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule will only affect depredation control of DCCOs, and will not affect energy supplies, distribution, or use. This action will not be a significant energy action, and no Statement of Energy Effects is required.

Compliance with Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that “The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter” (16 U.S.C. 1536(a)(1)). It further states that the Secretary must “insure that any action authorized, funded, or carried out. . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat” (16 U.S.C. 1536(a)(2)). This regulations change will not affect listed species.

Since the FEIS was completed in 2003, 250 species have been added to the threatened and endangered species list. However, no species has been added for which consultation across the range of the DCCO is warranted. In unusual cases, consultations at the State or Regional level *might* be needed to address concerns about some of the species listed in Appendix 5 of the FEA.

Literature Cited

U.S. Fish and Wildlife Service. 2003. Final Environmental Impact Statement: Double-Crested Cormorant Management in the United States. Available at <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/Cormorant/CormorantFEIS.pdf>.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons described in the preamble, we amend subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 continues to read as follows:

Authority: 16 U.S.C. 703–712.

2. Amend § 21.47 as follows:

a. By revising paragraph (d)(2) to read as set forth below;

b. By revising paragraph (d)(8)(i) to read as set forth below;

c. By removing the words “and bald eagles” from paragraph (d)(8)(ii);

d. By removing the words “or bald eagles” from paragraph (d)(8)(iii);

e. By adding a new paragraph (d)(8)(iv) to read as set forth below;

f. By removing the word “Each” and adding in its place the words “By January 31 each” at the beginning of paragraph (d)(9)(iii); and

g. In paragraph (f), by removing the word “2014” and adding in its place the word “2019”.

§ 21.47 Depredation order for double-crested cormorants at aquaculture facilities.

* * * * *

(d) * * *

(2) Double-crested cormorants may be taken only by shooting with firearms, including shotguns and rifles.

(i) Persons using shotguns must use nontoxic shot, as listed in 50 CFR 20.21(j).

(ii) Beginning January 1, 2017, persons using centerfire rifles must use bullets that contain no more than 1% lead.

* * * * *

(8) * * *

(i) To protect wood storks, the following conservation measures must be observed anywhere Endangered Species Act protection applies to this species: all control activities are allowed if the activities occur more than 1,500 feet from active wood stork nesting colonies, more than 1,000 feet from active wood stork roost sites, and more than 750 feet from feeding wood storks.

* * * * *

(iv) Any agency or its agents or any individual or company planning to implement double-crested cormorant control activities that may affect bald eagles must comply with the National Bald Eagle Management Guidelines (<http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>) in conducting the activities.

* * * * *

3. Amend § 21.48 as follows:

a. By revising paragraph (d)(2) as set forth below;

b. In the introductory text of paragraph (d)(8)(i), by removing the words “wood storks, and bald eagles” and adding in their place the words “and wood storks”;

c. In paragraphs (d)(8)(i)(A) and (d)(8)(i)(B), by removing the words “or occur more than 750 feet from active bald eagle nests;” in each place that they occur;

d. By adding a new paragraph (d)(8)(i)(D) to read as set forth below;

e. In paragraph (d)(8)(iii), by removing the word “four”;

f. By revising paragraph (d)(11) to read as set forth below; and

g. In paragraph (f), by removing the word “2014” and adding in its place the word “2019”.

§ 21.48 Depredation order for double-crested cormorants to protect public resources.

* * * * *

(d) * * *

(2) Double-crested cormorants may be taken only by means of egg oiling, egg and nest destruction, cervical dislocation, firearms, and CO₂ asphyxiation.

(i) Persons using shotguns must use nontoxic shot, as listed in 50 CFR 20.21(j).

(ii) Beginning January 1, 2017, persons using centerfire rifles must use bullets that contain no more than 1% lead.

(iii) Persons using egg oiling must use 100 percent corn oil, a substance exempted from regulation by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act.

* * * * *

(8) * * *

(i) * * *

(D) Any agency or its agents planning to implement double-crested cormorant control activities that may affect bald eagles must comply with the National Bald Eagle Management Guidelines

(<http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>) in conducting the activities.

* * * * *

(11) Each agency conducting control activities under the provisions of this regulation must provide annual reports, as described in paragraph (d)(10) of this section, to the appropriate Service Regional Migratory Bird Permit Office by January 31 for control activities undertaken the previous calendar year. We will regularly review agency reports and will periodically assess the overall impact of this program to ensure compatibility with the long-term conservation of double-crested cormorants and other resources.

* * * * *

Dated: May 19, 2014

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014-12318 Filed 05/27/2014 at 8:45 am; Publication Date: 05/28/2014]